

1 EDMUND G. BROWN JR.  
2 Attorney General of the State of California  
3 DANE R. GILLETTE  
4 Chief Assistant Attorney General  
5 JULIE L. GARLAND  
6 Senior Assistant Attorney General  
7 ANYA M. BINSACCA  
8 Supervising Deputy Attorney General  
9 AMANDA J. MURRAY, State Bar No. 223829  
10 Deputy Attorney General  
11 455 Golden Gate Avenue, Suite 11000  
12 San Francisco, CA 94102-7004  
13 Telephone: (415) 703-5741  
14 Fax: (415) 703-5843  
15 Email: Amanda.Murray@doj.ca.gov

16 Attorneys for Respondent Warden

17  
18 IN THE UNITED STATES DISTRICT COURT  
19  
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

21  
22 LA MERLE RONNIE JOHNSON,

23 Petitioner,

24 v.

25 ROSANNE CAMPBELL, Warden,

26 Respondent.

27 C 07-2921 JSW

28 **RESPONDENT'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS; SUPPORTING  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

29  
30 Judge: The Honorable  
31 Jeffrey S. White

32  
33 **TO PETITIONER LA MERLE RONNIE JOHNSON, IN PRO PER:**

34  
35 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. § 2254 and Rule 4 of the Rules  
36 Governing § 2254 Cases in the United States District Courts, Respondent<sup>1/</sup> moves the Court for  
37 an order dismissing the above-entitled action on the ground that Petitioner La Merle Ronnie

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39  
40 1. The proper respondent in this action is Acting Warden Richard Subia, not Rosanne  
41 Campbell. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994) (holding that the  
42 warden where the petitioner is incarcerated is the proper respondent); Rule 2(a), 28 U.S.C. § 2254.  
43 Moreover, because the actions complained of in Johnson's petition concern a parole consideration  
44 hearing, the Board of Parole Hearings is used interchangeably with Respondent in this Motion to  
45 Dismiss and supporting Memorandum of Points and Authorities.

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47 Resp't's Not. of Mot. & Mot. to Dismiss; Supporting Mem. of P. & A.

48  
49 *Johnson v. Campbell*  
50 C 07-2921 JSW

1 Johnson did not exhaust his state court remedies. This motion is based on the notice and motion;  
 2 the supporting memorandum of points and authorities and exhibits; and the pleadings, records,  
 3 and files in this action.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **INTRODUCTION**

6 This is a federal habeas corpus action brought by Petitioner La Merle Ronnie Johnson, a  
 7 California state prisoner. Johnson is lawfully in the custody of the California Department of  
 8 Corrections and Rehabilitation (CDCR) following his conviction for robbery, assault with a  
 9 deadly weapon, and kidnaping. (Ex. A, Abstract of Judgment.) He was sentenced to an  
 10 indeterminate sentence of life, plus eleven years. (*Id.*) Williams challenges the Board's March  
 11 22, 2006 decision denying him parole. (*See generally*, Pet.) This Court should dismiss the  
 12 petition because Williams failed to exhaust his state court remedies.

13 **ARGUMENT**

14 **JOHNSON'S HABEAS PETITION SHOULD BE DISMISSED BECAUSE**  
 15 **HE FAILED TO EXHAUST STATE COURT REMEDIES BEFORE FILING HIS**  
**FEDERAL HABEAS CORPUS PETITION.**

16 The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applies to all federal  
 17 petitions for writs of habeas corpus filed on or after its April 24, 1996 effective date. *Lindh v.*  
 18 *Murphy*, 521 U.S. 320, 322-323, 326 (1997). Accordingly, AEDPA applies to this petition.

19 Under AEDPA, a petition for a writ of habeas corpus on behalf of a person in custody  
 20 pursuant to the judgment of a state court cannot be granted unless the prisoner has exhausted the  
 21 remedies available in the state courts. 28 U.S.C. § 2254(b)(1)(A); *see O'Sullivan v. Boerckel*,  
 22 526 U.S. 838, 844 (1999) (a state inmate must properly exhaust available state court remedies  
 23 before a federal court may consider granting habeas corpus relief). If one or more claims in the  
 24 federal petition have not been exhausted, the district court must dismiss the petition. *Pliler v.*  
 25 *Ford*, 542 U.S. 225, 227 (2004) (citing *Rose v. Lundy*, 455 U.S. 509, 510 (1982)). This rule  
 26 provides the state courts a full and fair opportunity to resolve federal constitutional claims before  
 27 they are presented to the federal court, thus "protect[ing] the state courts' role in the enforcement  
 28 of federal law." *Rose*, 455 U.S. at 518.

1 It is the petitioner's burden to prove he has exhausted his state court remedies before filing  
 2 his federal habeas petition. *Williams v. Craven*, 460 F.2d 1253, 1254 (9th Cir. 1972) (per  
 3 curiam). "A petitioner has satisfied the exhaustion requirement if: (1) he has 'fairly presented'  
 4 his federal claim to the highest state court with jurisdiction to consider it [citations] . . . or (2) he  
 5 demonstrates that no state remedy remains available." *Johnson v. Zenon*, 88 F.3d 828, 829 (9th  
 6 Cir. 1996). In California, a petitioner exhausts his federal claim by fairly presenting it to the  
 7 California Supreme Court. *Kim v. Villalobos*, 799 F.2d 1317, 1318 (9th Cir. 1986). Finally, a  
 8 petitioner has not exhausted the available state court remedies "if he has the right under the law  
 9 of the State to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c).

10 Here, contrary to Johnson's assertion (Petn. at 4-5), there is no evidence that he presented  
 11 his claims challenging the Board's 2006 decision denying him parole to the California Supreme  
 12 Court before seeking federal habeas relief. (Ex. B) Thus, the claims in his federal petition are  
 13 unexhausted.

14 Further, Johnson is not precluded from exhausting his state court remedies because he  
 15 could either file a habeas corpus petition in the proper California superior court or he could  
 16 proceed directly to the California Supreme Court, which has original jurisdiction to review  
 17 petitions for writs of habeas corpus. Cal. Const. art. VI, § 10. Accordingly, Johnson can still file  
 18 a habeas petition in the California Supreme Court alleging his unexhausted claims. Because  
 19 Johnson has not "reach[ed] the point where he has no state remedies available to him," *Peterson*  
 20 *v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003), the petition must be dismissed.

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## **CONCLUSION**

2       Johnson did not present his claims challenging his 2006 parole denial to the California  
3       Supreme Court. Therefore, this Court must dismiss this petition because it Johnson failed to  
4       exhaust his claims.<sup>2/</sup>

Dated: December 13, 2007

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

DANE R. GILLETTE  
Chief Assistant Attorney General

JULIE L. GARLAND  
Senior Assistant Attorney General

ANYA M. BINSACCA  
Supervising Deputy Attorney General

AMANDA J. MURRAY  
Deputy Attorney General  
Attorneys for Respondent

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26       2. If this Court denies Respondent's Motion to Dismiss, Respondent respectfully requests  
27 that Johnson provide Respondent with the exhibits allegedly attached to his Petition. Johnson refers  
28 to, but does not attach, several exhibits to his Petition. However, none of these exhibits appear to  
relate to Johnson's alleged exhaustion of his state court remedies.

Resp't's Not. of Mot. & Mot. to Dismiss; Supporting Mem. of P. & A.

*Johnson v. Campbell*  
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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Johnson v. Campbell**

No.: **C 07-2921 JSW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 13, 2007, I served the attached

**RESPONDENT'S NOTICE OF MOTION AND MOTION TO DISMISS;  
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**La Merle R. Johnson, J-92682  
Mule Creek State Prison  
(C14-245L)  
P.O. Box 409060  
Ione, CA 95640-9060  
In Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 13, 2007**, at San Francisco, California.

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M.M. Argarin  
Declarant

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*M.M. Argarin*  
Signature